The Video Distribution Market: Overcoming Barriers to Competition

Video Retransmission Reform is Necessary to Deliver the Benefit of Competition to Consumers

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Retransmission Rulemaking Should Cover Entry

- The Petition for Rulemaking regarding Retransmission Consent filed by Time Warner, et al is a good start.
- A Notice of Proposed Rulemaking should also ask about issues specific to the additional disadvantages faced by new entrants.
- Smaller markets and smaller entrants face additional retransmission consent issues.
- In particular, denying carriage or withholding carriage during negotiation may be a good faith violation about which the FCC should ask questions in an NPRM.
- In addition, the FCC should ask whether unjustified rate disparities reflect a lack of good faith bargaining.

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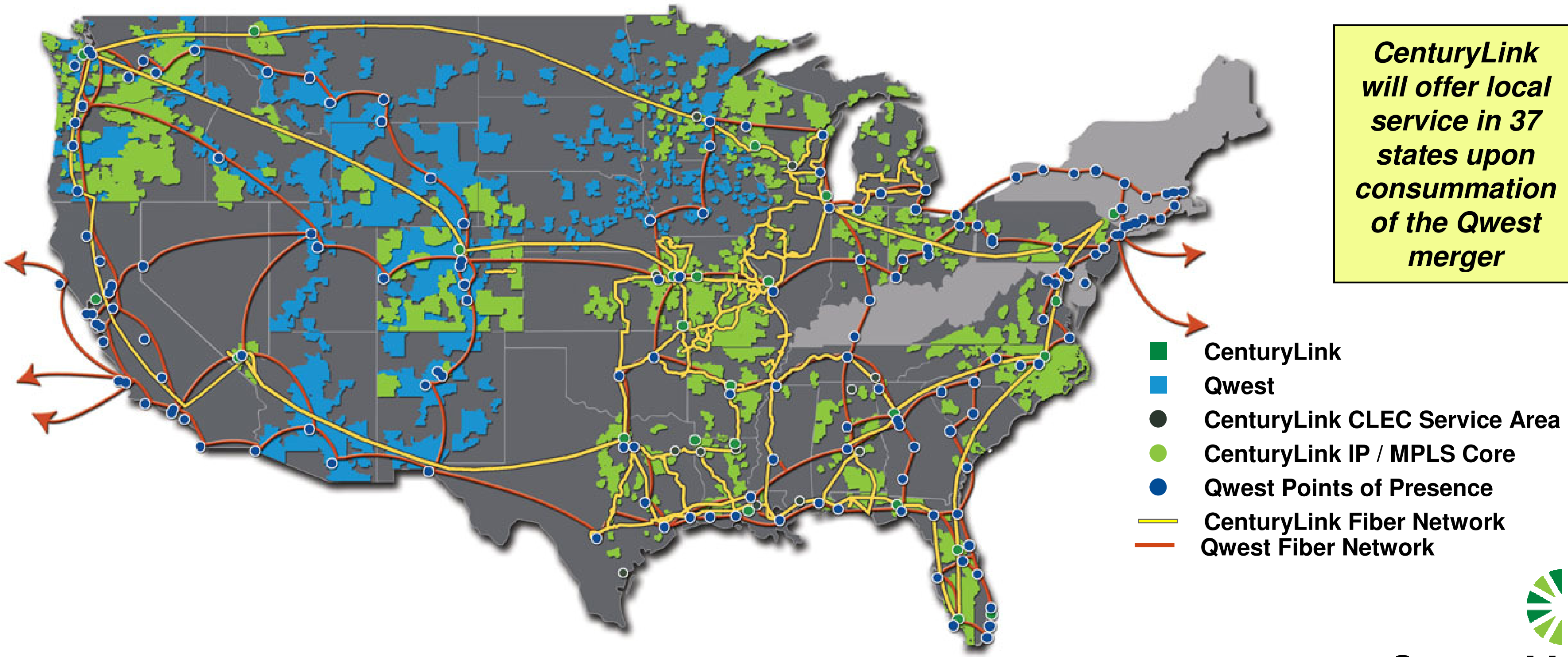
CenturyLink is Growing Video Provider Retransmission

- CenturyLink is a video distributor in select markets in Wisconsin, Missouri, Nevada, and Florida.
- CenturyLink is on track to become a national video provider as a key component of its acquisition of Qwest.
  - CenturyLink has committed, as part of the regulatory approval process, to enable distribution of video services to many sizable markets in the western half of the U.S.



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CenturyLink Brings Competitive Choice to Video; Benefiting Consumers in its Markets

"We believe the combination of CenturyLink's and Qwest's employees, assets and service areas will provide us greater scale, scope and expertise and will provide significant benefits for shareholders, customers and our communities. This combination will enhance our ability to deploy innovative IP products and high-bandwidth services to business customers, expand availability and speed to consumers, and ***offer superior, differentiated video products.****"* **-- CenturyLink CEO Glen Post**

- CenturyLink's entry adds much-needed ***consumer choice*** in the facility-based video distribution market.
  - CenturyLink is generally the ***only facility-based competitor*** to the local cable provider in markets it enters.
  - The consumer benefits of facilities-based video provider choice include:
    - ***new capabilities***
    - ***differentiated programming and pricing options***

5 Largest Qwest-served MSA's offer a large scale video opportunity:

Location:	Population	(Nat'l Rank)
1. Phoenix, AZ	4.4M	(12)
2.Seattle, WA	3.4M	(15)
3.Minneapolis, MN	3.3M	(16)
4.Denver, CO	2.6M	(21)
5.Portland, OR	2.2M	(23)

Note 1: Many Qwest markets are growing faster than the national average, a trend that is expected to continue.

Note 2: CenturyLink has not publicly stated which, if any, additional markets it intends to expand its video offerings. This listing should not be interpreted as an indication of market expansion.

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FCC Action Needed to Reduce Retransmission Barriers to Entry

- As a new entrant, CenturyLink believes it is experiencing terms that are substantially worse than incumbents:
  - Payment believed to be far higher per-subscriber rates than paid by competitors
  - Tying increased levels of undesired content to desired content
  - Tying national agreement terms into single market arrangements
- Price/value relationship is broken; all programmers sometimes seek same rate in a market despite wildly disparate value propositions
- Other times, one programmer in a market will exercise its power to demand rates from a new entrant far in excess of the rates offered by the others, which likely are the same as offered to the incumbent cable co.
- Programmer may not want competition--without competition, the cable company may charge higher prices to customers and possibly afford to pay higher retransmission fees.

Policymakers must step in and determine what is "fair" as market forces have failed to be an effective regulator in the video retransmission consent market.

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A Real Example of Market Failure: CenturyLink and FOX in Orlando, FL

- In Orlando, during negotiations between CenturyLink and FOX for program access, FOX offered terms that appear to be far worse than those offered to other video distributors in the Orlando market:
  - CenturyLink would be required to pay $0.75 per subscriber in year 1 of the contract and $1 per subscriber in year 2; ***4X to 5X more*** than FOX content in other markets that are not owned and operated.
  - Offered terms are 3X more than those offered by other network affiliates.
  - Pricing ***contingent on taking local feed and showing select new networks***, with no option for unbundling of programming.

New entrants lack viable negotiating leverage to obtain programming on terms similar to incumbent cable operators; expansion to additional markets/consumers requires regulatory intervention

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Potential Remedies to Give Consumers Video Choice

- The FCC should take steps to remedy defects in the video distribution market to ensure reasonable terms and rates
- Require interim carriage--blocking or removing programming during negotiation/renegotiation not permitted
- Provide relief from syndicated exclusivity or other interim carriage
  - For example, permit Tallahassee, FL programming into Panama City, FL market for interim period to avoid blackouts
- Require mediation and/or arbitration to resolve negotiations
- Require disclosure of programming contracts to resolve disputes
- Require Opt-In and or Most Favored Nation for terms and pricing under certain circumstances
- Require a greater level of program unbundling

Without remedy, expansion to small and mid-size markets, in particular, becomes far less likely

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